

Boston College Environmental Affairs Law Review

Volume 19

Issue 3 *The 1991 Bellagio Conference on U.S.-U.S.S.R.
Environmental Protection Institutions*

Article 7

5-1-1992

New Tendencies in the Development of Legal Protection for the Environment in the Republics

U.S. Shemshuchenko

Follow this and additional works at: <http://lawdigitalcommons.bc.edu/ealr>



Part of the [Environmental Law Commons](#)

Recommended Citation

U.S. Shemshuchenko, *New Tendencies in the Development of Legal Protection for the Environment in the Republics*, 19 B.C. Env'tl. Aff. L. Rev. 515 (1992), <http://lawdigitalcommons.bc.edu/ealr/vol19/iss3/7>

This Symposium Article is brought to you for free and open access by the Law Journals at Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College Environmental Affairs Law Review by an authorized administrator of Digital Commons @ Boston College Law School. For more information, please contact nick.szydlowski@bc.edu.

NEW TENDENCIES IN THE DEVELOPMENT OF LEGAL PROTECTION FOR THE ENVIRONMENT IN THE REPUBLICS

*U.S. Shemshuchenko**

The changes that have occurred during the years of perestroika in the political and economic relations between the Union and the republics have left their imprint on the character of the legal protection of the environment within the republics. These changes are evident both in the shift of the locus of government interest in environmental protection from the Union to the republics and in the subsequent expansion of republican administrative and legal guarantees protecting the rights of citizens to a healthy environment. These new tendencies have several concrete manifestations.

First, the issues of environmental protection and rational use of natural resources have become constituent parts of the declarations of sovereignty that all the republics adopted in 1990. In these declarations are enshrined the sovereign rights of each republic to control its own natural resources and independently implement measures for environmental protection. Ecological sovereignty has become an integral part of the idea of state sovereignty in every republic. For example, the Ukraine's Declaration of State Sovereignty states that the republic independently will determine both the organization and implementation of environmental protection efforts within its borders and the use of its natural resources. The Ukraine also has reserved the right to forbid the construction on its territory of any manufacturing plants, including facilities of an all-Union significance, that threaten the ecological safety of its citizens.

In addition, a major change has occurred in the concept of property rights in natural resources. If before these rights were constitutionally reserved for the Soviet Union, now they rest with the republics.

* Director, Institute of State and Law, Academy of Sciences of the Ukraine.

Both Union and republican laws on property and republican constitutions secure this legal order. In addition, in a number of republics including Lithuania, Latvia, and Georgia, there is a recognized right to land ownership. This resolution of the issue of natural resource ownership should result in the more rational and careful use of natural resources as well as the protection of the republics' sovereignty.

Another significant change—stipulated under the new Soviet doctrine of the priority of republican laws above Union laws—lies in the modification of the procedures for codifying ecological law. Before, as a rule, the Union passed its laws first, and then republics adopted legal acts patterned on those federal laws. Now, rather than waiting for the enactment of a federal law on environmental protection, the republics are working to develop and adopt their own analogous laws. Each republic thus will be better able both to consider the uniqueness of ecological regulations and to provide for the priority of ecological interests above economic ones.

In the republics that suffered as a result of the Chernobyl disaster—primarily Russia, the Ukraine, and Byelorussia—there is a noticeable trend toward regulation to prevent environmental pollution by radioactive wastes and mitigate the consequences of the disaster. For example, in 1991, the Ukraine adopted laws entitled “On the Legal Administration of Territories Contaminated with Radionuclides as a Result of the Chernobyl Disaster” and “On the Social Protection of Citizens Who Have Suffered as a Result of the Chernobyl Disaster.” Many of the articles in these laws are aimed at providing both a safe environment, with regard to radioactive pollution, and healthy conditions for human life.

It is also necessary to mention the individual republics' move toward developing and perfecting their administrative mechanisms for the protection of the environment. Right now the republics themselves are deciding important questions of organization and management with due consideration of their own particular needs. As a result, the old republican committees for environmental protection have undergone changes in their names and functions. This process, however, is not yet complete. There remain the problematic issues of the extent of the jurisdiction that these committees will have and the nature of their relationships with the environmental protection services of the government ministries and departments and with local Soviet Peoples' Deputies.

Finally, it would be impossible not to mention the republics' interest in increasing the use of economic strategies in their environ-

mental protection activities. The Ukraine, for example, has introduced fees for polluting the environment and using natural resources. Moreover, some of the republics have created environmental protection funds. The transition to market relations, however, demands more. From the legal point of view, it is necessary first of all to regulate the use of these strategies. In this context arises the fundamental question of how advisable it would be for republics to adopt special laws governing the use of economic methods in the areas of natural resources and environmental protection.